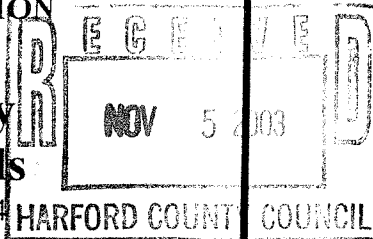


## STANDARD APPLICATION

# Harford County Board of Appeals

Bel Air, Maryland 21014



Case No. 5384  
 Date Filed 10-30-03  
 Hearing Date \_\_\_\_\_  
 Receipt \_\_\_\_\_  
 Fee \$450<sup>00</sup>

Shaded Areas for Office Use Only

## Type of Application

Nature of Request and Section(s) of Code \_\_\_\_\_

- ☐ Administrative Decision/Interpretation  
☐ Special Exception  
☐ Use Variance  
☐ Change/Extension of Non-Conforming  
☐ Minor Area Variance  
☐ Area Variance  
☐ Variance from Requirements of the C  
☐ Zoning Map/Drafting Correction

CASE 5384 MAP 66 TYPE Modification of Condition #1 in Case 2378

ELECTION DISTRICT 1 LOCATION 107 Edgewood Road, Edgewood, Md. 21040

BY 107 Edgewood Road LLC

Appealed because Modification of Condition #1 in Zoning Appeal Case #2378 as modified in Civil  
 Action CA2635(which was an appeal from Case #4088) to allow an increase in residents allowed from  
 24 residents to 36 residents in a B2 District requires approval by the Board.

- ☒ Modification of Condition #1 in Case  
 No. 2378 as modified in Civil Action  
 No. CA2365 (Case #4088)

**NOTE:** A pre-conference is required for property within the NRD/Critical Area or requests for an Integrated Community Shopping Center, a Planned Residential Development, mobile home park and Special Exceptions.

## Applicant/Owner (please print or type)

Name 107 Edgewood Road, LLC Phone Number Call Attorney

Address 107 Edgewood Road, Edgewood, MD 21040  
                     Street Number                    Street                    City                    State                    Zip Code

Co-Applicant N/A Phone Number \_\_\_\_\_

Address \_\_\_\_\_  
                     Street Number                    Street                    City                    State                    Zip Code

Contract Purchaser N/A Phone Number \_\_\_\_\_

Address \_\_\_\_\_  
                     Street Number                    Street                    City                    State                    Zip Code

Attorney/Representative Robert S. Lynch, Esquire Phone Number 410-879-2222

Address Stark and Keenan, P.A., 30 Office Street, Bel Air, MD 21014  
                     Street Number                    Street                    City                    State                    Zip Code

Hearing: 1/28/04

Rev. 12/00

## Land Description

Address and Location of Property 107 Edgewood Road, Edgewood, MD 21040

Subdivision None Lot Number \_\_\_\_\_

Acreage/Lot Size .436 Election District 01 Zoning B2

Tax Map No. 66 Grid No. 4A Parcel 435 Water/Sewer: Private \_\_\_\_\_ Public X

List ALL structures on property and current use: 8824 sq. ft. building which houses Phoenix  
Recovery Center

Estimated time required to present case: 1 Hour

If this Appeal is in reference to a Building Permit, state number N/A

Would approval of this petition violate the covenants and restrictions for your property? No

Is this property located within the County's Chesapeake Bay Critical Area? Yes \_\_\_\_\_ No X

If so, what is the Critical Area Land Use designations: N/A

Is this request the result of a zoning enforcement investigation? Yes \_\_\_\_\_ No X

Is this request within one (1) mile of any incorporated town limits? Yes \_\_\_\_\_ No X

## Request

See Attached

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Justification

See Attached

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval request. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)*

### **REQUEST**

The Applicant requests a modification of Condition 1 in Zoning Appeal Case No. 2378 as modified in Civil Action No. CA2635 (which was an appeal from Zoning Appeal Case No. 4088) to allow for an increase in the maximum number of residents allowed on the premises from the current 24 residents to 36 residents.

### **JUSTIFICATION**

The Phoenix Recovery Center is located at 107 Edgewood Road, Edgewood, Maryland 21040. Phoenix Recovery Center provides drug and alcohol addiction treatment. It is one of two organizations in Harford County certified by the State Department of Health and Mental Hygiene, Office of Health Care Quality that provides initial services of non-life threatening detoxification for both drug and alcohol related addiction. The Center provides medical coverage 24 hours a day. The Center has the capacity to house 36 beds, however, it is currently limited to 24 beds. Allowing the modification as requested would allow Phoenix to continue to provide valuable treatment services at affordable prices to additional individuals and will allow Phoenix to continue to serve a growing need in the community. Phoenix provides Harford County residents an opportunity for treatment within the County without residents having to seek treatment services out county or out of state. The granting of this modification request will have no detrimental impact on the property and surrounding neighborhood.

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IN THE MATTER OF  
THE APPLICATION  
OF FORWARD STEP, INC.

Harford County Board of  
Appeals Case No. 4088

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* HARFORD COUNTY  
\* Docket No. 6  
\* Folio No. 148  
\* Civil Action No. CA2635  
\* \* \* \* \*

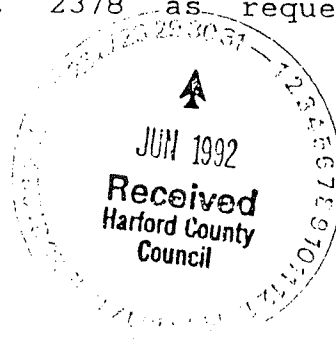
ORDER

The Court, having reviewed the record and considered argument presented by Counsel for Petitioner, hereby finds as follows:

1. The Board of Appeals erroneously applied the variance test set forth in Section 267-11 of the Harford County Zoning Code to the above captioned case.

2. Section 267-9(L) of the Harford County Zoning Code contains the proper test for amending conditions imposed by the Board of Appeals.

3. The record evidence shows that the Petitioner satisfied the test set forth in Section 267-9(L) of the Harford County Zoning Code to amend conditions one and three imposed by the Board of Appeals in Case No. 2378 as requested by Petitioner.



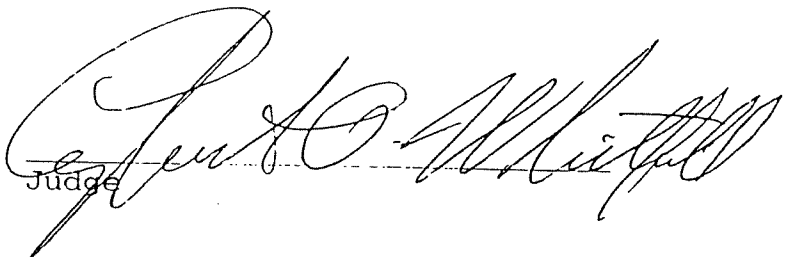
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4. No evidence was presented by the Protestants below which would make the Board of Appeals' decision fairly debatable. Therefore, the Board of Appeals' decision is clearly erroneous.

WHEREUPON, it is this 10th day of May, 1992, by the Circuit Court for Harford County,

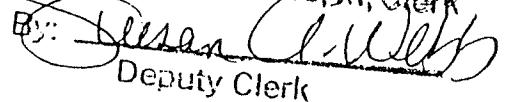
ORDERED, that the decision of the Board of Appeals in Case No. 4088 is hereby REVERSED and Petitioner's request to amend conditions 1 and 3 imposed by the Board of Appeals in Case No. 2378 is hereby GRANTED.

  
Judge

cc: John J. Gessner, Esquire  
Venable, Baetjer and Howard  
11 South Main Street  
P.O. Box 1776  
Bel Air, MD 21014  
(301) 879-1551  
Attorney for Petitioner

True Copy:

Test: Charles G. Hieb, III, Clerk

By:   
Deputy Clerk

BOARD OF APPEALS CASE NO. 4088	*	BEFORE THE
APPLICANT: FORWARD STEP, INC.	*	ZONING HEARING EXAMINER
REQUEST: Modification of Board	*	OF HARFORD COUNTY
of Appeals Case No. 2378 to		
permit male residents;	*	
107 Edgewood Road, Edgewood	*	Hearing Advertised
	*	10/24/90, 10/31/90, 11/7/90,
HEARING DATE: November 26, 1990		1/9/91 and 1/16/91
and February 11, 1991	*	
	*	
	*	
	*	
	*	
	*	
	*	
	*	

ZONING HEARING EXAMINER'S DECISION

The Applicant is requesting a variance to modify Conditions No. 1, imposed by Board of Appeals Case No. 2378, to allow male residents to be housed at the Forward Step facility.

The subject property is located at 107 Edgewood Road, Edgewood, Maryland 21040, and is more particularly identified on Tax Map 66, Grid 4A, Parcel 435. The property consists of 0.436 acres, is located within the First Election District and is presently zoned B2.

The Applicant first applied to the Board of Appeals in 1978 for a conditional use, pursuant to then Code Section 8.022, to operate a crisis center for women in a B2 District (Case No. 2378). While the Code first permitted such uses in an R1 District as a conditional use, the Hearing Examiner recommended approval and imposed 6 conditions as part of said approval. The County Council later approved and adopted the decision of the Hearing Examiner. Condition No. 1 of Board of Appeals Case No. 2378 decision, dated January 4, 1979 states:

"That the crisis center be for female residents only, the maximum at any given time 24 residents on the premises."

The Applicant herein is requesting that this condition be modified to allow male residents to be handled at the facility.

CASE NO. 4088 - FORWARD STEP, INC.

Rev. William McNally testified on behalf of the Applicant. The witness indicated that the center has been run in conformity with the decision rendered in Case No. 2378 since its inception. The witness admitted however, that there were presently nine men and one woman housed at the facility, and that the men have been there since March 1990. The witness said that this was the only facility in Harford County that houses people in crisis and that Forward Step, Inc. proposed to house men as well as women. Rev. McNally said that these men would normally be between the ages of 20 and 30 and are referred from the Veteran's Hospital at Perry Point. The witness testified that treatment for men and women was very similar with the exception that the veterans travel to Perry Point twice per week and personnel from Perry Point visit the facility at Forward Step twice per week. The witness said that there had never been a disturbance involving the police at the facility. Rev. McNally indicated that a hardship would be imposed on Forward Step if the request were denied in that the facility has never filled its 24 beds.

Upon cross-examination, Rev. McNally stated that the facility employed no full time psychologists and that counselors put in 4-6 hours per day at the center. There are two (2) counselors, one of whom works full time and the other part time. Rev. McNally works full time as a counselor at the center. Rev. McNally described the men that the facility proposes to take in as psychologically battered but ready to live in the community. He admitted that it is possible that these men may never be capable of living outside of the facility and there stay at Forward Step may be unlimited.

Mr. Donald Crone appeared who said he was a social worker at Perry Point. Mr. Crone said that personnel at the Perry Point V.A. Hospital provide supervision standards, conduct investigations and direct the counseling efforts in regard to housing facilities such as Forward Step, Inc. The witness characterized the placements as male and female veterans who have no violent history, are inactive, and pose no threat to the community.

CASE NO. 4088 - FORWARD STEP, INC.

He stated that he was satisfied that the treatment at Forward Step is adequate and successful. The witness stated that it was possible that all 24 beds could be used for placement of male veterans. When asked whether he thought the present staffing at Forward Step, Inc. would be adequate for rape crisis victims, the witness was unable to state an opinion. Mr. Crone confirmed the testimony of Rev. McNally, that many of these male veterans would reside at Forward Step permanently. The witness also stated that the V.A. pays Forward Step for each placement.

Several protestants appeared who opposed the application because they felt it would be detrimental to the community in that it may be dangerous. Several opponents said that they had observed male residents of Forward Step wandering aimlessly in the traffic areas without apparent supervision. Mr. Dan Riley agreed with the original concept of Forward Step as a crisis center for females who had been victims of rape or abuse and believed that was a need in Harford County in 1978 and continues to be a need today. Mr. Riley opined that the grant of the requested variance would result in a total change from the original concept and eliminate the existence of a much needed crisis center for women.

The Department of Planning and Zoning, in its Staff Report dated November 19, 1990, indicated its recommendation that the proposed variance be granted.

CONCLUSION:

The Applicant has characterized the request as a minor variance from the conditions imposed in Case No. 2378, by permitting men, as well as women, to be treated at the facility. An examination of the Hearing Examiner's findings in that case are, therefore, pertinent to the present examination. The Hearing Examiner found as a matter of fact that the proposal in Case No. 2378 was for a crisis center for women and juveniles. The purposes of the center were to treat women for drug abuse and alcoholism, rape, battering and to treat older teenage runaways.



CASE NO. 4088 - FORWARD STEP, INC.

It was noted that there were several witnesses in that case who described the need for such a shelter and the Hearing Examiner recognized that need. The opinion of the Hearing Examiner indicates his understanding that the persons treated at Forward Step would be in crisis and would reside there temporarily until such time as they were able to return to the community at large.

The request of Forward Step, Inc., to modify the conditions of Case No. 2378, to allow men as well as women to be housed there, will in effect change dramatically the original concept of the facility. The facility will no longer be a crisis center providing temporary shelter but will become a group home consisting of a resident population of male veterans who are likely to be long term or permanent residents of the facility. It is possible, based on the testimony of Mr. Crone, that the facility will house only male veterans and that female victims of rape, drugs and battering will be unable to utilize the facility. This represents a dramatic change in the use of the property and does not represent a change of only one condition of the original conditional use but alters the very premise upon which it was granted.

The Hearing Examiner finds that the request to allow men must be evaluated under the present Harford County Zoning Code in light of all of the facts and circumstances presented. What the applicant proposes is to establish a group home for male veterans in a B2 zoning district. Pursuant to Table I, Principal Permitted Uses for Specific Zoning Districts, Group Homes, are not permitted as Special Exceptions in the B2 District. Without addressing the need for such a facility in Harford County or the humanitarian nature of the purposes for the request, the Hearing Examiner must find that the request does not conform to the Harford County Code as it relates to permitted uses.

CASE NO. 4088 - FORWARD STEP, INC.

The Harford County Code permits area variances pursuant to Section 267-11; however, the Applicant proposes to change the use of the property and its request must be characterized as a request for a use variance. The Maryland Court of Special Appeals, in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974), noted the distinction between a use variance, which changes the character of the zoning district and where there is a more difficult burden of proving undue hardship, and an area variance (height, setback, etc.) where there is a lesser burden of proving practical difficulty. To prove undue hardship for a use variance the following three criteria must be met:

1. Applicant must be unable to secure a reasonable return or make any reasonable use of his property (mere financial hardship or opportunity for greater profit is not enough).
2. The difficulties or hardships are peculiar to the subject property in contrast with other properties in the zoning district.
3. Hardship was not the result of Applicant's own actions.

As to Condition No. 1, it is clear that the use of the property as originally contemplated by Forward Step, Inc. is still on going and represents a reasonable use of the property. Mr. James Jewell, Treasurer for Harford County, appeared as a witness and offered various documents into evidence, marked collectively as Protestant's Exhibits No. 4a-z. Based on a review of those exhibits, the Hearing Examiner concludes that funding from various sources related to the operation of an emergency shelter were not forthcoming to Forward Step, Inc. as a result of its own actions and inactions in complying with the various terms of the grant monies involved.

CASE NO. 4088 - FORWARD STEP, INC.

The Hearing Examiner finds, as a matter of fact, that the hardship claimed by Applicant, that beds cannot be filled unless men are also allowed, is a result of the actions of Applicant and are not peculiar to the specific property. Since the V.A. pays for its placements, the disallowance of the request will create a financial hardship for the Center but financial hardship is insufficient to justify the grant of a variance.

For the foregoing reasons, the Hearing Examiner recommends that the Applicant's request be denied.

Date March 15, 1991

William F. Casey  
William F. Casey  
Zoning Hearing Examiner

RE: CONDITIONAL USE TO OPERATE A WOMEN'S \*  
CRISIS CENTER; 1st Election District,  
107 Edgewood Road \*

BEFORE

THE ZONING HEARING EXAMINER

OF HARFORD COUNTY

APPLICANT: Presbury United Methodist  
Church (Rev. J. Wm. McNally) \*

Case #2378

HEARING DATE: December 20, 1978

Hearing Advertised:

Aegis: 11/9/78 & 11/16/78

Harford Democrat: 11/8/78 & 11/15/78

\* \* \* \* \*

#### ZONING HEARING EXAMINER'S DECISION

Reverend J. William McNally, represented D. Franklin McGinnis, Esquire, appeared on behalf of Presbury United Methodist Church requesting a conditional use to construct a female crisis center at 107 Edgewood Road, in the First Election District.

Rev. McNally testified that it is the intention of the Presbury United Methodist Church to demolish an existing structure on the parcel and to transfer the parcel to Forward Step, Inc. for the purpose of building a female crisis center. The project is to have a program to deal with four major problems of females: (1) drug abuse and alcoholism (2) rape; (3) battered women; and (4) the older teenage runaways.

Rev. McNally further testified that the program would be administered by a private corporation and would be staffed by psychologists. Rev. McNally also testified that no individuals with criminal records would be admitted to the crisis center and that six of the twenty-four beds in the center would be donated to juvenile uses.

Maj. Theodore S. Moyer, of the Maryland State Police, and his wife, Elaine Moyer, testified that they are active in the program and that there is a need for such a center in Harford County since none exist at this time.

John L. Topfer, Jr., of the Juvenile Services Administration, also testified in favor of the request and stated that such a center would be helpful to his administration since there would be a place to house juvenile runaways until such time as they can be returned to their parents.

Mr. Ted Cochran testified that he is the lay leader of the church and that he is in favor of the program and that he did not foresee any detriment to the community.

Mr. Jesse Bartley appeared and testified in opposition to the request stating that he felt the location is bad and, further, that there are two bars in the immediate area of the subject property which could lead to problems. Mr. Bartley also testified that

his understanding of the crisis center was that people cannot be detained and are free to come and go as they see fit.

CONCLUSION:

The proposed use of the property to establish a center for treatment of drug abuse and alcoholism, rape, battered women, and teenage runaways is a conditional use in an R-1 district under Section 8.022. This Hearing Examiner feels that the conditional use therefore can be approved in a B-2 district subject to the following conditions:

- (1) That the crisis center be for female residents only, the maximum at any given time 24 residents on the premises.
- (2) That the center will provide adequate off-street parking for residents and staff.
- (3) That the program be run in conformity with the brochure submitted as Applicant's Exhibit No. 3.
- (4) That any signs or lighted structures be constructed in such manner as to be in keeping with the residential atmosphere surrounding the subject parcel. Any exterior lighting should be directed away from nearby residences.
- (5) That if the property ceases to be used by Forward Step, Inc. as a crisis center, it will revert back to the Presbury United Methodist Church.
- (6) That the pastor serving Presbury United Methodist Church and the lay-leader, elected by the Presbury United Methodist Church, will be permanent members of the Board of Directors of Forward Step, Inc.

Date: January 4, 1979

L. A. Hinderhoffer  
L. A. Hinderhoffer  
Zoning Hearing Examiner